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ENVIRONMENTAL ASSESSMENT BOARD

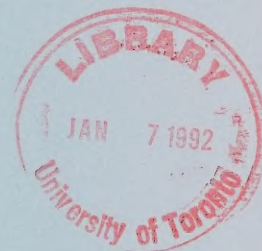
VOLUME: 336

DATE: Thursday, December 12, 1991

BEFORE:

A. KOVEN Chairman

E. MARTEL Member



FOR HEARING UPDATES CALL (COLLECT CALLS ACCEPTED) (416)963-1249

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HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental
Assessment for Timber Management on Crown
Lands in Ontario;

- and -

IN THE MATTER OF a Notice by the
Honourable Jim Bradley, Minister of the
Environment, requiring the Environmental
Assessment Board to hold a hearing with
respect to a Class Environmental
Assessment (No. NR-AA-30) of an
undertaking by the Ministry of Natural
Resources for the activity of timber
management on Crown Lands in Ontario.

Hearing held at the offices of the Ontario
Highway Transport Commission, Britannica
Building, 151 Bloor Street West, 10th Floor,
Toronto, Ontario on Thursday, December 12th,
1991, commencing at 1:00 p.m.

VOLUME 336

BEFORE:

MRS. ANNE KOVEN
MR. ELIE MARTEL

Chairman
Member

A P P E A R A N C E S

| | |
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| MR. V. FREIDIN, Q.C.) | |
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| MS. K. MURPHY) | RESOURCES |
| MR. B. CAMPBELL) | |
| MS. J. SEABORN) | MINISTRY OF ENVIRONMENT |
| MS. N. GILLESPIE) | |
| MR. R. TUER, Q.C.) | |
| MS. E. CRONK) | ONTARIO FOREST |
| MR. R. COSMAN) | INDUSTRIES ASSOCIATION |
| MR P. CASSIDY) | |
| MR. D. HUNT) | |
| MR. R. BERAM | ENVIRONMENTAL ASSESSMENT BOARD |
| MR. E. HANNA) | ONTARIO FEDERATION OF |
| DR. T. QUINNEY) | ANGLERS & HUNTERS AND |
| MR. D. HUNTER) | NISHNAWBE-ASKI NATION |
| MR. M. BAEDER) | and WINDIGO TRIBAL COUNCIL |
| MS. M. SWENARCHUK) | FORESTS FOR TOMORROW |
| MR. R. LINDGREN) | |
| MR. D. COLBORNE) | GRAND COUNCIL TREATY |
| MR. G. KAKEWAY) | #3. |
| MR. R. IRWIN | ONTARIO METIS & ABORIGINAL ASSOCIATION |
| MR. J. ANTLE | NORTHERN ONTARIO TOURIST OUTFITTERS ASSOCIATION |
| MS. M. HALL | KIMBERLY-CLARK OF CANADA LIMITED and SPRUCE FALLS POWER & PAPER COMPANY |
| MR. R. COTTON | BOISE CASCADE OF CANADA LTD. |

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I N D E X O F P R O C E E D I N G S

Page No.

Scoping : Panel 1

| | |
|--|---------------|
| Ontario Federation of Anglers & Hunters; Northern Ontario Tourist Operators Association. . | 58915 - 58948 |
|--|---------------|

1 ---Upon commencing at 1:05 p.m.

2 MADAM CHAIR: Good afternoon. Please be
3 seated.

4 Good afternoon.

5 MR. HANNA: Good afternoon, Madam Chair.

6 MADAM CHAIR: Our purpose here this
7 afternoon is to conduct a scoping session for the Panel
8 1 evidence of the Ontario Federation of Anglers &
9 Hunters and the Northern Ontario Tourist Operators
10 Association.

11 The Board has a few other matters it
12 would like to bring up briefly afterwards.

13 Is there anything the parties want to
14 bring to the attention of the Board before we begin the
15 scoping process?

16 (no response)

17 Okay, let's go ahead and do it that way.

18 As you know, Mr. Hanna, the Board has
19 gone through your evidence for Panel 1 very carefully
20 and we have a few questions we would like to have Ms.
21 Simon address in her oral evidence and we will go
22 through our questions first and then we will have an
23 exchange between the parties and you can question them
24 and they can ask you questions about the timing and so
25 forth.

1 Is Mr. Hunter showing up today?

2 MS. SWENARCHUK: I had heard yesterday
3 Mr. McGibbon would be coming for him. He is not here
4 right now.

5 MADAM CHAIR: All right. Well, we will
6 proceed anyway.

7 Have the parties received a letter from
8 Mr. Cassidy to the effect that he will not be at
9 scoping sessions?

10 The OFIA cannot afford participation of
11 its counsel beyond, I suppose, being involved in
12 cross-examination as they see appropriate, but they
13 have submitted interrogatories and a statement of issue
14 for this panel of evidence and Mr. Cassidy has
15 committed to take no longer than two hours in
16 cross-examination for this panel.

17 Mr. Hanna, the Board has questions in
18 five different areas that they wish to put to Ms. Simon
19 in preparation for focusing her oral evidence-in-chief.

20 The first comment of the Board has to do
21 with Ms. Simon's comments beginning on page 10 of her
22 witness statement. The Board wants to know - and this
23 discussion has to do with various documents that Ms.
24 Simon has included behind Tab 5 of her witness
25 statement - the Board wants to know if Ms. Simon is

1 saying that the proponent, in this case the Ministry of
2 Natural Resources, or this hearing Board should be
3 relying on the documents listed behind Tab 2 -- sorry,
4 that's not 5, that's Tab 2, as guidance in developing
5 what she calls good environmental planning systems.

6 The Board notices of the five documents
7 cited at Tab 2 only two of these documents, both
8 authored by the Ministry of the Environment, predate
9 the submission of MNR's environmental assessment in
10 1987 and we would like Ms. Simon to respond as to her
11 view of how a proponent can incorporate such guidance
12 that becomes available during a four-year hearing that
13 we have before us, and how a hearing Board as well can
14 incorporate what seem to be rapidly changing
15 developments in the field of environmental planning.

16 Ms. Simon calls for the use of
17 quantitative impact prediction procedures and she seems
18 to support in principle the proposals of the OFAH and
19 NOTOA for such procedures with respect to habitat
20 supply analysis, socio-economic prediction procedures
21 and watershed, water quality and fisheries impacts.

22 We wanted to explore with Ms. Simon the
23 amount of confidence that she puts on such quantitative
24 procedures really being workable with respect to timber
25 management planning and is she proposing to the hearing

1 panel that the proponent would be required, if the
2 application were approved, the proponent would be
3 required to incorporate such procedures and leave the
4 details of how these impact prediction procedures might
5 or might not work to experimenting in the field.

6 MR. HANNA: Madam Chair, can I ask -- I'm
7 sorry.

8 MADAM CHAIR: Go ahead.

9 MR. HANNA: I'm not quite sure I follow
10 that.

11 MADAM CHAIR: What Ms. Simon has said is
12 essentially she supports very strongly the use of such
13 impact procedures and she points to various places in
14 your evidence where you have various witnesses who say
15 we think this could be be done, we think that could be
16 done.

17 The Board notices that they say on many
18 of those occasions: Yes, there is uncertainty. There
19 is always an uncertainty in using these kinds of
20 procedures, and the Board wants to know if Ms. Simon is
21 proposing that if we were to approve the application
22 this Board would say: Yes, proponent, you must use
23 these procedures, but they can't be specified in any
24 kind of a condition because there is uncertainty as to
25 how successful they would be once you were using them

1 in the field.

2 In other words, the details of how impact
3 prediction procedures would actually take place would
4 be something that would have to be tried.

5 Now, I'm sure your other witnesses are
6 going to address that because they are proposing quite
7 specific types of procedures, but I want to know from
8 Ms. Simon, is she saying what I expect if an
9 application were approved is some direction that, yes
10 proponent, you have to use this type of procedure or
11 would she be saying you must use A, B, C, D, specific
12 procedures.

13 It's not clear to us because she claims
14 not to have specific expertise in the various
15 procedures certainly that are proposed by your
16 witnesses.

17 MR. HANNA: Madam Chair, I'm not quite
18 certain how you would prefer to deal with this. There
19 are some issues that will be position issues dealing
20 with the coalition itself, and I'm certainly prepared
21 to respond to those. There will be certain issues that
22 Ms. Simon will deal that are her evidence and her
23 opinion and whatever.

24 I'm quite prepared to perhaps give you
25 some response now from the coalition's point of view

1 that might assist you in understanding her evidence
2 when it comes forward, if you prefer, or we can wait
3 for that when the time.

4 I just make that offer to you because
5 there are two aspects here I think of what you are
6 saying. One is what the coalition proposing and also
7 how does Ms. Simon's evidence fit within that.

8 I'm at your leisure when you want to deal
9 with that, but I certainly understand the Board's
10 interest in understanding what's being proposed and how
11 it all fits together and how this evidence relates to
12 that. I can deal with that whatever you would prefer.

13 MADAM CHAIR: I think we are content
14 right now to hear from Ms. Simon because her
15 evidence -- the way we look at it right now is her
16 evidence is saying this is really an important aspect
17 of the application even though the details -- she is
18 talking with respect from a planning point of view and
19 that's what we are interested in exploring with her.
20 She has got to have some confidence that these
21 procedures would in fact work, we assume, in order for
22 her to make these proposals to the Board.

23 A third area of her evidence that we
24 would like Ms. Simon to elaborate on is responding to
25 an issue that's been raised often during this hearing

1 in the evidence and that is a fear that the timber
2 management planning process could become paralyzed,
3 that there are potentially so many procedural obstacles
4 that could be put into place that decisions wouldn't
5 get made.

6 Now, I am certainly paraphrasing many
7 different witnesses and lots of different evidence, but
8 that's the flavour of a concern that we have heard
9 repeated over and over. In that context, we have
10 noticed a few of Ms. Simon's proposals that we would
11 like her to clarify and provide some indication to the
12 Board that, in fact, these proposals are workable and
13 would not end up in a situation where a decision
14 couldn't get made because of the process and obviously
15 the practical outcome might be some small mill running
16 out of a supply of wood and having to close down or
17 face layoffs or whatever.

18 Ms. Simon proposes that MNR must not be
19 allowed to proceed with the implementation of any part
20 of a TMP until the Minister of the Environment has made
21 a decision on a bump-up. Now, this is found on page 17
22 of her paper behind Tab 5 and the Board wants to know
23 very carefully, does she mean to say that no timber
24 management operation can proceed in any part of a
25 management unit or only that the specific activity on

1 the area that is the subject of the bump-up request not
2 proceed.

3 With respect to Ms. Simon's suggestions
4 on the operation of a public advisory committee, one
5 alternative she explores is including an automatic
6 referral to the Ministry of the Environment in the
7 event of a PAC approval of part of a TMP or the entire
8 TMP.

9 I think Ms. Simon discussed this as an
10 alternative to your coalition's term and condition No.
11 79 within the OFAH term and condition document that
12 proposed a 60 per cent majority of PAC members to
13 approve a TMP or it would be automatically deferred to
14 the EA Board for a hearing.

15 These are simply examples of steps in the
16 decision-making process that the Board wonders how they
17 would fit together and if Ms. Simon believed they were
18 reasonable and would move the process along to a
19 decision about a specific timber management plan we
20 would like her comments on that.

21 On page 29 of her witness statement, Ms.
22 Simon discusses the null alternative as being an
23 essential component of the alternatives to evaluation
24 and we wanted to have Ms. Simon explain more fully the
25 application of the null -- the evaluation of the null

1 alternative for road access. We want to understand
2 clearly what she is saying.

3 Is she suggesting that the geographical
4 unit should be the forest management unit or the region
5 or some larger part of the area of the undertaking.
6 The time frame for this evaluation, is she saying it's
7 in the first five year TMP or over the 20-year planning
8 process or the rotation of a forest stand. We are not
9 clear on the geography or the schedule of how you would
10 do that evaluation for roads.

11 Our final question to Ms. Simon is
12 probably a pretty difficult one to answer, but we
13 wanted her to get some sense of how the Board is trying
14 to understand her evidence and another theme that we
15 have heard from many places is that the documentation
16 involved in the timber management planning process, or
17 the paper burden as it has been called by various
18 people, is already pretty large and there is a concern
19 that it would become unmanageable in some way.

20 Now, can Ms. Simon give us any indication
21 of the amount of documentation her proposals would
22 involve for the authors of individual timber management
23 plans.

24 We noticed, for example, when she is
25 talking about the null alternative on page 32 she makes

1 the statement that:

2 "The level of analysis necessary for the
3 null alternative for access planning may
4 not be great."

5 It is difficult for the Board to
6 translate Ms. Simon's evidence into some concrete idea
7 of what's a feasible workload for a timber management
8 plan author.

9 We understand certainly her evidence with
10 respect to her background as a planner, but we are not
11 quite sure where her proposals would take us with
12 respect to how much time and work is involved in
13 satisfying everything that she feels is necessary to a
14 class EA.

15 Those are areas the Board would like to
16 see explored by Ms. Simon in oral examination.

17 MR. HANNA: Can I ask, Madam Chair,
18 clarification on two points that you have raised?

19 MADAM CHAIR: Sure.

20 MR. HANNA: The first, this matter of
21 paralysis of the timber management planning process - I
22 think it was your third point - you indicated that
23 there was a number of certain proposals that -- or
24 certain concerns that you had and I had started
25 numbering after that your reference to page 17, Tab 5

1 which was with respect to bump-up and whether the
2 bump-up applied to just the activity being bumped up or
3 whether it was the whole timber management plan.

4 Was that an example of that?

5 MADAM CHAIR: That was an example of a
6 point in the process that might stop the process
7 completely.

8 MR. HANNA: The same then applied to the
9 local -- the PAC and the comments you provided on PAC?

10 MADAM CHAIR: Yes.

11 MR. HANNA: Okay. It is helpful, of
12 course, if I can have those examples so that she can
13 have time to consider them.

14 Are there other examples that deal with
15 paralysis that you would want her specifically to deal
16 with?

17 MADAM CHAIR: I think those are the
18 examples that we noticed in her evidence.

19 MR. HANNA: The last point deals with the
20 paper burden issue. I will tell you now and I will
21 tell the parties that she will not be brought forward
22 to provide a description of what has to go into a
23 timber management plan in terms of paper,
24 documentation, that sort of thing.

25 What Ms. Simon will be doing is saying

1 there are certain things that from a good environmental
2 planning point of view should be done. Panel 9 will be
3 coming forward to the Board and saying: Here is the
4 type of documentation, here is the level of effort
5 required to do that documentation. We have understood
6 Ms. Simon's evidence, we have taken that into
7 consideration and here from a timber management
8 planning perspective how we see all the pieces of the
9 puzzle fitting together and what it means in terms of
10 timber management planning.

11 Obviously, you can ask the question, you
12 know, the questions are open to Ms. Simon, but I can
13 tell the parties now that she will be not be in a
14 position to speak in an informed way from a timber
15 management planning point of view what her proposals
16 might imply. I haven't asked her to put her mind to
17 that.

18 MADAM CHAIR: So the Board can expect
19 that Messrs. Stewart, Dr. Quinney and Dixon will say to
20 us that the coalition's proposal would entail such and
21 such an amount of work or would add to this amount of
22 documentation?

23 MR. HANNA: Yes.

24 MADAM CHAIR: All right, thank you.

25 MR. MARTEL: I think part of our problem

1 is we have travelled and everywhere we have gone we
2 have heard concern expressed by the public saying:
3 God, we can't follow it anymore, you know, because they
4 are all volunteer people who are out there and the
5 concern is you burden it so -- does the burden become
6 so great that you can't get people to volunteer to
7 serve.

8 MR. HANNA: We are very sensitive to
9 that, Mr. Martel, and the reason Mr. Dixon is on that
10 panel, he is a lay witness, and he is - I think the
11 Board has already heard from him in Fort Frances - a
12 very busy tourist operator, faces the exact problem and
13 I think he came to the Board and made those comments in
14 Fort Frances and one of the reasons he is on the panel
15 is to provide the Board with a layman perspective as to
16 will this help in dealing with that type of issue.

17 MADAM CHAIR: Do any of the parties have
18 any questions for Mr. Hanna with respect to Ms. Simon's
19 testimony and then we will canvass -- Ms. Swenarchuk,
20 you are not cross-examining this witness?

21 MS. SWENARCHUK: Yes, and we filed
22 interrogatories and a statement of issues.

23 MADAM CHAIR: We have not seen either of
24 those documents.

25 MR. PASCOE: I just received these today.

1 MADAM CHAIR: We haven't seen that and we
2 didn't know.

3 MS. SWENARCHUK: Mr. Hanna has our
4 statement of issue, I believe.

5 MR. HANNA: Yes, Madam Chair, I have the
6 statement of issues and interrogatories from FFT.

7 MS. SWENARCHUK: I apologize that it
8 wasn't provided to the Board. I certainly will --

9 MADAM CHAIR: That's fine, we will take a
10 look at it.

11 We will hear then from Forests for
12 Tomorrow and the Ministry of the Environment and the
13 Ministry of Natural Resources as to how long they
14 expect to be in cross-examination of this witness.

15 Do you have anything to say Mr. Freidin
16 with respect to this panel?

17 MR. FREIDIN: Just that we understand --
18 well, maybe Mr. Hanna can indicate when we will be in
19 receipt of the interrogatory responses for this panel.

20 Our estimates are going to be based on an
21 absence of those, but do you have any idea when they
22 will be ready, Ed?

23 MR. HANNA: Madam Chair, I believe Mr.
24 Miner who is the case manager for the coalition has
25 spoken to Mr. Pascoe. I had tried to get a hold of Mr.

1 Miner to find of what sort of arrangement we had made
2 with Mr. Pascoe.

3 I hate to put Mr. Pascoe on the spot, but
4 I think he knows more about it than I do. Whatever Mr.
5 Miner has agreed to with Mr. Pascoe would be the
6 timing.

7 MADAM CHAIR: Would you like to report to
8 the parties, Mr. Pascoe, on the date you have.

9 MR. PASCOE: On October 17 it was agreed
10 to that they would be submitted on December the 6th. I
11 spoke with Mr. Miner yesterday to ask him where they
12 were and he said that they would be submitted to the
13 Board some time next week.

14 MR. MARTEL: Mr. Hanna, as you can
15 appreciate people are looking for these. It is just
16 because -- are we going to go through this every time
17 or has it just been a problem with this particular one?

18 MR. HANNA: Mr. Martel --

19 MR. MARTEL: Yes, go ahead. So that we
20 don't have to go through the same thing every time.

21 MR. HANNA: Mr. Martel, when Mr. Miner
22 and Mr. Pascoe were working out the schedule Mr. Miner
23 at that time was not familiar with the procedures that
24 the Board had set out in terms of the timing of
25 interrogatories and whatever and, as I understand it,

1 the requirement of the Board is that it is ten days
2 before the witness appears in the stand.

3 Because of the requirements that we have
4 been under in timing, I believe that is what was
5 discussed with Mr. Pascoe and that that scheduling was
6 not in keeping with the earlier procedural directive by
7 the Board.

8 MADAM CHAIR: In the case of your first
9 two witness statements, I think the problem has been
10 the Christmas break and the fact that we have --
11 because we are tightly scheduling your case for a panel
12 to take one week from beginning to end, we have to
13 scope your second panel the first week we are back in
14 January and the third one.

15 So, yes, the first three sets of
16 interrogatories will be due quite close together.

17 MR. MARTEL: The reason for that was we
18 are not sure how long the panel will take. If it
19 doesn't take us long we might want to do two in
20 January. If one took two days, let's say - don't plan
21 on it, but if it did - you would be in a position where
22 you wouldn't have the next panel scoped and that was
23 the necessity in Mr. Pascoe and I drafting the schedule
24 the way it was, is to try to protect the time problem.

25 MR. HANNA: Well, I will undertake to the

1 Board to do everything I can to get those
2 interrogatories out as quickly as possible.
3 Unfortunately, I haven't had a chance to speak to Mr.
4 Miner and see what their status is, but I will do
5 everything in my power to get them out to the parties
6 as soon as possible.

7 MS. SEABORN: Madam Chair, I believe the
8 original ruling was that the parties would normally
9 have 40 days to ask interrogatories and then the person
10 calling the evidence would have 15 days to respond.

11 I know that we had discussed in terms of
12 rescheduling Mr. Hanna's case all of us relaxing or
13 speeding up the time in which we would review each
14 panel and submitting our interrogatories, and Mr.
15 Pascoe's procedural directive of October 17th, '91 sets
16 out at least the schedule that my client is following
17 in terms of submitting interrogatories, expecting
18 responses and submitting statement of issues and
19 attending at the scoping sessions.

20 MADAM CHAIR: Yes. Well, certainly the
21 way it stands now, Mr. Hanna, is your client is
22 required to have the interrogatory responses for the
23 first three witness statements in by December 30th.

24 December 6th was the deadline for the
25 first witness -- the interrogatories for the first

1 witness statement, December 16th is the deadline for
2 receiving responses to the interrogatories for Panel 2,
3 December 30th is the deadline for receiving responses
4 for Panel 3. It's pretty tightly scheduled thereafter.

5 MR. FREIDIN: Madam Chair, I would just
6 like to emphasize that getting these interrogatories in
7 accordance with the schedule is important not only for
8 the Board's purposes in scoping, but most of the
9 counsel here are here on every panel. So if we are
10 here four days a break and we are backed up with late
11 interrogatories it is almost impossible to do any
12 proper preparation for our clients on the next panel.
13 So it is really crucial that the interrogatory schedule
14 be complied with. It's tight in terms of our time to
15 respond and prepare after receiving the answers.

16 In this case, we are facing Panel 1,
17 maybe not getting them until the end of next week,
18 Christmas is upon us, we come here January the 6th to
19 start. So you know what that means in terms of getting
20 people together and actually doing the work. If we
21 start off on the wrong foot we are going to be in
22 trouble.

23 MADAM CHAIR: Mr. Hanna, would you be
24 able to report or telephone Mr. Pascoe next week after
25 you have talked to Mr. Miner and reassure us that we

1 can stick to this schedule with the expectation of
2 receiving the responses to the interrogatories?

3 MR. HANNA: Yes, Madam Chair.

4 MADAM CHAIR: Thank you.

5 Mr. Freidin, how long are you going to be
6 in cross-examination?

7 MR. FREIDIN: I am going to say a day and
8 a day. It may be longer and it may be shorter
9 depending on the answers we get to our interrogatories.

10 MADAM CHAIR: Ms. Seaborn?

11 MS. SEABORN: Optimistically we can do it
12 in two to three hours.

13 MADAM CHAIR: Ms. Swenarchuk?

14 MS. SWENARCHUK: Again, depending on the
15 responses to the interrogatories. If the responses are
16 complete, then my cross would be very short. In any
17 event, I would expect not more than a half a day.

18 How long is your direct expected to be,
19 Mr. Hanna?

20 MR. HANNA: I indicated to the Board
21 earlier it would be a day at the most and I expect it
22 will be much less than that.

23 MR. MARTEL: You can see why I wanted to
24 do two the first week of January, Mr. Hanna.

25 MR. HANNA: I understand.

1 MS. SWENARCHUK: I wanted to ask the
2 question if in fact this panel finishes earlier than
3 four days will the second panel start the same week?

4 MADAM CHAIR: Mr. Hanna?

5 MR. HANNA: I believe, Madam Chair, with
6 Panel 2 we can start earlier, but I do have to indicate
7 to the Board there are certain time slot that are not
8 as flexible, particularly Dr. Thomas.

9 While I will do my very best with the
10 panels that we have to -- that we have flexibility to
11 do that, I am sure, as you can appreciate, having seen
12 where the witnesses are coming from and what their
13 occupations are that it's very hard.

14 Many of these are not private consultants
15 that do this as a job, they are volunteer witnesses.
16 It is very, very difficult for me to impose on them to
17 be available on call in the same way that I would
18 expect with a paid consultant.

19 So I just raise that, but certainly as
20 far as Panel 2 goes I think we are in a position to
21 follow immediately upon Panel 1.

22 MADAM CHAIR: When that can be done, Mr.
23 Hanna, when we can speed up and bring an early onset of
24 the next panel, that's fine, but we don't want to have
25 you bringing witnesses in from out of town, having them

1 come up for a day, being dismissed, going away for four
2 days, incurring the expense of coming back for another
3 trip. We don't want to add any expense to your case.

4 It is so tightly scheduled right now I
5 think that the Board has simply said that it will take
6 nine weeks and that is worked in to our schedule. I
7 think it is pretty clear to all the parties the Board
8 isn't going to allow more than a week per panel and it
9 won't be convinced under any circumstances as to why a
10 panel will not be done in four days.

11 I think your estimates for
12 cross-examination of Panel 1 are probably fairly well
13 in line, but the Board just won't allow the examination
14 of any panel to exceed that amount of time.

15 With respect to the panels going faster
16 than that, if it is possible to do it without incurring
17 a lot of expense and reorganization, then the Board
18 would appreciate that.

19 MR. FREIDIN: Madam Chair, I hope that we
20 can meet that schedule, but I don't want to remain
21 silent and say that I will not be making submissions
22 for a panel to go beyond a week if is necessary for
23 there to be a full cross-examination.

24 I don't think we need to deal with it
25 now. I think we should deal with any such issue in a

1 particular fact situation that may arise. I just
2 didn't want to remain silent.

3 MADAM CHAIR: Well, the Board will always
4 listen to your submissions, Mr. Freidin.

5 MR. FREIDIN: I hope so and without
6 having it already in mind that it would refuse them
7 whatever they are.

8 MADAM CHAIR: No, we don't make up our
9 minds ahead of time, but we are committed to a very
10 tight schedule for the remainder of this case and I am
11 sure your concerns about whether or not you are being
12 forced to go at a pace faster than you would like will
13 be a recurring theme over the next year until this case
14 is finished.

15 MR. FREIDIN: I would like to see it end.
16 One of my problems is I cross-examine last, so my
17 client is the one will probably end up feeling the
18 brunt of any shortened schedule. Thank you.

19 MS. SWENARCHUK: Madam Chair, I hate to
20 take the unprecedented step of agreeing with my
21 colleague Mr. Freidin.

22 I expect I will be cross-examining second
23 so it is unlikely to be a problem for me, but in
24 principle I do have to agree with his concern here.

25 I just wanted to reiterate, though, that

1 we are all interested in finishing the case as quickly
2 as possible and that's another reason why complete and
3 speedy answers to interrogatories, when we are dealing
4 with a nine-week time line, could probably help all of
5 us with the cross-examination.

6 MADAM CHAIR: Certainly, Mr. Hanna, that
7 has got to be your job, to get your client to get those
8 interrogatories responses out as quickly as they can
9 and, again, we would like to hear from you early next
10 week by way of Mr. Pascoe as to how quickly Mr. Miner
11 will be getting those responses out for the next three
12 panels.

13 MR. HANNA: Yes, Madam Chair.

14 MADAM CHAIR: Mr. Hanna, did you have any
15 questions for any of the parties with respect to their
16 plans for cross-examination?

17 MR. HANNA: No, Madam Chair.

18 MADAM CHAIR: Have we finished the
19 scoping session?

20 All right. We asked Mr. Barem to write a
21 letter to the parties dated December the 10th because
22 we wanted to get some idea with respect to our own
23 scheduling about how various outstanding projects and
24 negotiations are going and we asked Mr. Barem to have
25 the parties be in a position to maybe give us a hint

1 today as to how things are progressing.

2 Mr. Freidin?

3 MR. FREIDIN: I think I can do that,
4 Madam Chair, subject to comments from my friends.

5 No. 1 was the party negotiations of terms
6 and conditions. I can happily report that the
7 negotiations ended on December the 11th, that the
8 documentation was finalized today, it is off to the
9 printers and we hope to have it in the hands of the
10 Board next week.

11 In relation to the silvicultural options.
12 A request has been made of the committee - as you know,
13 it is sort of an all party committee - to in fact
14 prepare another status report at their earliest
15 convenience and include in that status report
16 information as to when they believe that their exercise
17 will be finalized and their report can be provided.
18 That meeting hasn't been convened yet for the committee
19 to make that decision, but there are steps being taken
20 hopefully as I speak to schedule a meeting.

21 In relation to No. 3, I am assuming that
22 the reference to the various policy initiatives
23 referred to are the matters referred to in the
24 sustainable forestry initiative. That's how I
25 interpreted No. 3 when you referred to various policies

1 initiatives.

2 MADAM CHAIR: Well, we haven't heard
3 anything about the sustainable forestry initiative.
4 The last thing we heard was last spring when you said
5 various things were happening and you would tell the
6 Board what they all meant in good time and now is the
7 time.

8 MR. FREIDIN: To the extent that various
9 policy initiatives include those, those will all be
10 addressed in our reply evidence and you will have
11 written documentation of that at the end of March when
12 we submit our other reply written material.

13 If there are other specific policy
14 initiatives that are of interest to you that aren't
15 covered by what I have just said, maybe you can just
16 tell me what they are.

17 MR. MARTEL: The FPP.

18 MR. FREIDIN: FPP, same thing. I think
19 all of the -- yes, FPP will be included in the reply
20 material to be filed at the end of March.

21 Hopefully that addresses the three
22 matters raised, Madam Chair.

23 MADAM CHAIR: Thank you, Mr. Freidin.

24 We don't know how your negotiations went,
25 but certainly all the parties are to be congratulated.

1 I understand that you have been negotiating for some
2 time presumably, we haven't heard about this in months,
3 and we were most anxious to hear what the results are.

4 MR. MARTEL: Hopefully there is lots off
5 the table.

6 MS. SWENARCHUK: It has been productive.

7 MR. MARTEL: Okay.

8 MADAM CHAIR: What sort of document will
9 the Board get?

10 MS. SEABORN: Quite a long one.

11 MS. SWENARCHUK: A report from Mr.
12 Illing, the presiding -- what was --

13 MR. FREIDIN: The facilitator, I guess.

14 MS. SWENARCHUK: The facilitator which
15 will indicate the terms and conditions on which there
16 is agreement in a number of categories. I think you
17 will find it encouraging.

18 MADAM CHAIR: Do all the parties sign
19 this sort of a document or what does it come into the
20 Board as? Will it be exhibited?

21 MS. SWENARCHUK: It will be exhibited,
22 yes, I expect.

23 MR. FREIDIN: Just by way of background.
24 What you are going to get is this report from Mr.
25 Illing just sort of giving you background as to what

1 happened. You are going to get a document called
2 Schedule C to that document and it is basically going
3 to have listed, using as the base the Ministry of
4 Natural Resources' terms and conditions format, and you
5 will have an indication of all the terms or conditions
6 in relation to those various subject matters that the
7 parties have agreed to.

8 On some of them there will be no
9 outstanding sort of issues, but there will be on some
10 that other parties agree to what's there but they want
11 to add certain things. So if they want to add certain
12 things that will be the subject matter of evidence or
13 argument, and at a time which has yet to be determined
14 the other parties will be filing their final terms and
15 conditions and if there are differences or additions
16 which -- you know, if you are looking at the agreed
17 things and what they file it will become fairly
18 apparent where the differences lie.

19 MNR is hopeful of providing its redrafted
20 or revised terms and conditions early in January,
21 January the 6th. Again, as of yet there has been no
22 date fixed on which the other parties will file their
23 terms and conditions which will serve the purpose that
24 I have indicated. So that's in a nutshell what you are
25 going to get.

1 MR. MARTEL: In your final T&C will
2 you -- because this stuff is going to be scattered all
3 over, are you prepared to put in what the agreement is
4 when you file your term and condition; in other words,
5 to make it easier for the Board to see where you have
6 got agreement in your final terms and where you don't?

7 MR. FREIDIN: Are you saying --

8 MR. MARTEL: I mean, you have got a
9 report over here that's going to come, but it might be
10 easier when you are preparing your final terms and
11 conditions to say: Well, at least on this one there is
12 unanimous consent or two outstanding. Just to make it
13 apparent on one document where people are in agreement
14 with your final terms and conditions.

15 MR. FREIDIN: I will speak to Mr. Kennedy
16 about how we might do that, but as I understand what
17 you are saying, is that if you have a document, our
18 terms and conditions, and we had five things agreed to
19 on planning teams, you want to see those five things.

20 MR. MARTEL: It would make it easier, I
21 think.

22 MR. FREIDIN: If there were three more
23 things that we put in that there wasn't agreement on,
24 you want to be able to say: These are three additional
25 things from our perspective, but the first five things

1 were agreed to.

2 MR. MARTEL: I think it would be easier
3 for everyone, Mr. Freidin, if we could do that. We are
4 going to get a report, but that doesn't bring the terms
5 and conditions, as I am listening to you, together
6 because other parties are going to be saying: Well, we
7 might like an addition here. To have it all on one
8 final document might simplify it.

9 MR. FREIDIN: I think I understand and,
10 more importantly, Mr. Kennedy.

11 Mr. Kennedy could perhaps respond to this
12 better because I haven't been involved in a very deep
13 way with negotiations.

14 MADAM CHAIR: Well, I have no idea what
15 Mr. Martel is talking about or what you are talking
16 about, so, Mr. Kennedy, do you have something to say
17 about this?

18 MR. KENNEDY: Just I think when you get
19 Schedule C there will be an indication of what the
20 parties have agreed to. There will be an indication of
21 the subject matter where parties will want to pursue
22 further through their own terms and conditions. When
23 MNR files its package it can indicate where its
24 package -- which items are the same as in Schedule C of
25 the report.

1 MADAM CHAIR: So you are just repeating
2 Schedule C?

3 MR. KENNEDY: Yes.

4 MR. MARTEL: But it is all on one
5 document then. You are not running back to look at
6 another document.

7 MR. KENNEDY: I will caution you that you
8 would then have terms and conditions come in from other
9 parties as well.

10 MR. MARTEL: That's right. That's why I
11 want --

12 MR. KENNEDY: Perhaps it would be helpful
13 for them to take a similar format.

14 MR. HANNA: What I would offer as a
15 possible suggestion, the parties haven't discussed
16 this, although we did discuss the possibility of giving
17 the Board a tall pile of paper and we said: Oh, well,
18 the Board will be able to deal with that after this
19 hearing, but there was this discussion and I would
20 certainly think from our party's point of view, how I
21 could see possibly dealing with it would be to use the
22 Schedule C as the basic document and where additions or
23 changes were made to use a different type face or bold
24 face or something like that so the Board could then
25 easily see where the change is being proposed and make

1 it much more accessible to you. Otherwise you would
2 have to have a word-by-word comparison which would be
3 extremely tedious.

4 MR. MARTEL: That's what I am worried
5 about, Mr. Hanna.

6 MR. HANNA: But I think the parties have
7 agreed to take the basic structure that's come out of
8 the negotiation sessions and use that as a base upon
9 which then further additions and modifications would be
10 built on.

11 MS. SEABORN: You will recall, Mr.
12 Martel, that with the last round some of the parties
13 did respond to MNR's terms and conditions by putting
14 their changes in bold and I think a number of us
15 anticipate after January 6th when we prepare our new
16 T&Cs using that format, but the difference would be
17 that MNR's January 6th package will become the starting
18 point, at least from my client's perspective.

19 There will be some, in the cover note
20 that arrives with the Schedule C, an indication of what
21 these different categories mean, and perhaps rather
22 than us trying to anticipate the Board's questions once
23 you read that I think any of us would be happy to
24 answer any questions once you get that package.

25 MR. MARTEL: I think the thing that --

1 Mr. Freidin said he was going to be filing their final
2 T&Cs, I think he said, on January 6th.

3 MR. FREIDIN: On or about.

4 MR. MARTEL: Or about. I guess I was
5 just getting my order in earlier because to get it in
6 and then they try and change it, it would be better to
7 do it early than late. Without having seen anything, I
8 make that -- you know, I don't know what's there, but I
9 would like to try and keep things simple.

10 MR. FREIDIN: It will be our next draft
11 subject to, you know, being changed and subject to
12 earlier orders of the Board.

13 MADAM CHAIR: Mr. Hanna, how has this
14 negotiation -- the conclusions to the negotiation
15 affected the evidence you will be putting before the
16 Board? Does it shorten the amount of evidence you have
17 to put in for your case or does it eliminate the need
18 for any of your witnesses?

19 MR. HANNA: It will assist with the panel
20 dealing with public consultation to a degree because
21 there has been agreement reached. Yes, there has been
22 agreement reached on - I want it to be an accurate
23 reflection here of what took place - local citizens'
24 committees and that is one of the issues that is dealt
25 with in Panel 2.

1 MADAM CHAIR: So this is No. 2?

2 MR. HANNA: Yes.

3 MADAM CHAIR: Panel 2.

4 MR. HANNA: So there has been progress in
5 that respect which will assist and focus that evidence
6 more so than would otherwise be the case.

7 There are, however, fundamental
8 outstanding differences among the parties in terms of
9 the substance of the evidence that we are bringing in
10 the remainder of the panels, and I certainly assure the
11 Board at this time that the witnesses will only be
12 dealing with those issues that are in contention and
13 any issue that is not in contention will not be dealt
14 with in the evidence.

15 The only exception I will make is where
16 just for context it is necessary to refer to what is
17 been agreed on as the basis upon which then the next
18 step is taken, but the evidence that we have submitted
19 to the Board to this point was prepared subsequent to
20 most of the substantive agreements, perhaps not the
21 specific wording, but substantive agreements having
22 been reached. So the evidence does take into account
23 what's taking place in terms of the negotiation
24 process.

25 MADAM CHAIR: All right. Is there any

1 more business we have today?

2 (no response)

3 If not, then we won't see you until
4 January the 6th and Merry Christmas to everybody and we
5 will see you in Hearing Room 1.

6 Mr. Pascoe, what time are we starting on
7 Tuesday mornings?

8 MR. PASCOE: On Tuesdays we start at --

9 MADAM CHAIR: Or Monday.

10 MR. PASCOE: 10:30 on Monday morning.

11 MADAM CHAIR: And that will be our
12 regular starting time on Monday morning.

13 MR. PASCOE: That's right.

14 MADAM CHAIR: We will see you January
15 6th. Thank you.

16
17 ---Whereupon the hearing was adjourned at 1:55 p.m., to
18 be reconvened on Monday, January 6th, 1992
19 commencing at 10:30 a.m., Hearing Room 1.
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25 MC [C. Copyright 1985.]



